

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FILED

JUL 23 2008

MARTIN C. ASHMAN
UNITED STATES MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT

LARRY J. COLLIER,

Plaintiff,

VS.

WAL-MART STORES, INC., et. al.


Defendants

) Case No. 08 C 227

) Honorable Martin C. Ashman

MOTION TO ENTER A VOLUNTARY DISMISSAL AS TO CERTAIN
DEFENDANTS AND FILE AN AMENDED COMPLAINT INSTANTER

ESTATE BUSINESS TRUST. Plaintiff further requests that this Honorable Court grant him leave to file a First Amended Complaint instantler.

By: 
Bridget A. Mitchell

Bridget Mitchell
Attorney at Law
One North LaSalle St., Suite 1325
Chicago, IL 60602
312-214-4040
Atty. No. 71063

Thomas J. Tyrrell
Attorney at Law
1020 S. Arlington Heights Road
Arlington Heights, Illinois 60005
847-358-9400

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LARRY J. COLLIER,

Plaintiff,

VS.

WAL-MART STORES, INC., et. al.

Defendants

)
)
)
)
)
)
)
)
) Case No. 08 C 227
) Honorable Martin C. Ashman
)
)

FIRST AMENDED COMPLAINT AT LAW

NOW COMES the Plaintiff, LARRY J. COLLIER, by and through his attorneys, BRIDGET A. MITCHELL and THOMAS J. TYRRELL, and complaining against the Defendants, WAL-MART STORES, INC., WAL-MART REAL ESTATE BUSINESS TRUST, states as follows:

Count I – WAL-MART STORES, INC. – Negligence

1. On November 16, 2005 and at all times relevant to the matters in this Complaint, Defendant, WAL-MART STORES, INC., owned and/or leased, operated, managed, maintained, and controlled and/or contracted to operate, manage, maintain, and control a WAL-MART store, store number 5276, located at 1555 North Rand Road in the City of Palatine, County of Cook and State of Illinois.

2. On November 16, 2005 Plaintiff, LARRY J. COLLIER, was lawfully on the premises of Defendant, WAL-MART STORES, INC.'s, WAL-MART store, store number 5276, as a business invitee and was legally and lawfully in and upon the premises located at 1555 North Rand Road, in the City of Palatine, County of Cook and State of Illinois.

3. On or prior to November 16, 2005 it was the duty of Defendant, WAL-MART STORES, INC., individually and by and through its agents, servants, and employees acting on it's behalf, to exercise reasonable care and caution in and about the

EXHIBIT A

ownership, leasing, maintenance, operation, management, and control of said premises, and to keep, operate, and maintain the aforementioned premises in a reasonably safe condition for the use of patrons and others lawfully entering the premises of the building.

4. On and prior to November 16, 2005 the Defendant, WAL-MART STORES, INC., individually and by and through its agents, servants and employees acting its behalf, committed one or more of the following negligent acts and/or omissions:

- a. negligently operated, managed, maintained and controlled the men's dressing rooms, including the men's dressing room for disabled customers;
- b. failed to adequately inspect the men's dressing rooms, including the men's dressing room for disabled customers;
- c. failed to remove materials including a ladder, a metal rack, containers, bundles of plastic and debris from the men's dressing room for disabled customers;
- d. failed to warn Plaintiff of the defective and/or dangerous condition existing in the men's dressing room for disabled customers, consisting of, but not limited to, a ladder, a metal rack, debris, containers and bundles of plastic when Defendant knew or should have known of the presence of the condition;
- e. failed to barricade the defective and/or dangerous conditions in the men's dressing room for disabled customers;
- f. allowed the dangerous condition consisting of, but not limited to, a ladder, a metal rack, debris, containers and bundles of plastic, to remain in the men's dressing room for disabled customers;
- g. failed to properly, completely and safely clean up the men's dressing room for disabled customers;
- h. placed ladder, metal rack, container, debris and bundles of plastic in the men's dressing room for disabled customers;
- i. failed to provide Plaintiff with a safe place to try on clothing;
- j. was otherwise negligent.

5. That as a direct and proximate result of one or more of Defendant, WAL-MART STORES, INC.'s, negligent acts or omissions, as aforesaid, the ladder in the men's dressing room for disabled customers fell onto the Plaintiff, Larry J. Collier, directly causing the Plaintiff to sustain personal injuries, of an economic and non-economic nature including but not limited to medical expenses, pain and suffering, and loss of normal life.

WHEREFORE, the Plaintiff, LARRY J. COLLIER, prays for judgment against the Defendant, WAL-MART STORES, INC., for damages in excess of FIFTY THOUSAND AND NO/100 (\$50,000.00) DOLLARS and for such other relief as this court deems just.

Count II – WAL-MART REAL ESTATE BUSINESS TRUST – Negligence

1. On November 16, 2005 and at all times relevant to the matters in this Complaint, Defendant, WAL-MART REAL ESTATE BUSINESS TRUST, owned and/or leased, operated, managed, maintained, and controlled and/or contracted to operate, manage, maintain, and control a WAL-MART store, store number 5276, located at 1555 North Rand Road in the City of Palatine, County of Cook and State of Illinois.

2. On November 16, 2005 Plaintiff, LARRY J. COLLIER, was lawfully on the premises of Defendant, WAL-MART REAL ESTATE BUSINESS TRUST's, WAL-MART store, store number 5276, as a business invitee and was legally and lawfully in and upon the premises located at 1555 North Rand Road, in the City of Palatine, County of Cook and State of Illinois.

3. On or prior to November 16, 2005 it was the duty of Defendant, WAL-MART REAL ESTATE BUSINESS TRUST, individually and by and through its agents, servants, and employees acting on it's behalf, to exercise reasonable care and caution in and about the ownership, leasing, maintenance, operation, management, and control of said premises, and to keep, operate, and maintain the aforementioned premises in a reasonably safe condition for the use of patrons and others lawfully entering the premises of the building.

4. On and prior to November 16, 2005 the Defendant, WAL-MART REAL ESTATE BUSINESS TRUST, individually and by and through its agents, servants and

employees acting its behalf, committed one or more of the following negligent acts and/or omissions:

- a. negligently operated, managed, maintained and controlled the men's dressing rooms, including the men's dressing room for disabled customers;
- b. failed to adequately inspect the men's dressing rooms, including the men's dressing room for disabled customers;
- c. failed to remove materials including a ladder, a metal rack, containers, bundles of plastic and debris from the men's dressing room for disabled customers;
- d. failed to warn Plaintiff of the defective and/or dangerous condition existing in the men's dressing room for disabled customers, consisting of, but not limited to, a ladder, a metal rack, debris, containers and bundles of plastic when Defendant knew or should have known of the presence of the condition;
- e. failed to barricade the defective and/or dangerous conditions in the men's dressing room for disabled customers;
- f. allowed the dangerous condition consisting of, but not limited to, a ladder, a metal rack, debris, containers and bundles of plastic, to remain in the men's dressing room for disabled customers;
- g. failed to properly, completely and safely clean up the men's dressing room for disabled customers;
- h. placed ladder, metal rack, container, debris and bundles of plastic in the men's dressing room for disabled customers;
- i. failed to provide Plaintiff with a safe place to try on clothing;
- j. was otherwise negligent.

5. That as a direct and proximate result of one or more of Defendant, WAL-MART REAL ESTATE BUSINESS TRUST's, negligent acts or omissions, as aforesaid, the ladder in the men's dressing room for disabled customers fell onto the Plaintiff, Larry J. Collier, directly causing the Plaintiff to sustain personal injuries, of an economic and non-economic nature including but not limited to medical expenses, pain and suffering, and loss of normal life.

WHEREFORE, the Plaintiff, LARRY J. COLLIER, prays for judgment against the Defendant, WAL-MART REAL ESTATE BUSINESS TRUST, for damages in excess of FIFTY THOUSAND AND NO/100 (\$50,000.00) DOLLARS and for such other relief as this court deems just.

By: _____
Bridget A. Mitchell,
One of the attorneys for Plaintiff

Bridget A. Mitchell
Attorney at Law
One North LaSalle Street, Suite 1325
Chicago, Illinois 60602
312-214-4040
Attorney No. 71063
and

Thomas J. Tyrrell
1020 South Arlington Heights Road
Arlington Heights, Illinois 60005
847-358-9400
Attorney No. 24525

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LARRY J. COLLIER,

Plaintiff,

vs.

WAL-MART STORES, INC., et. al.

Defendants

[illegible]

Case No. 08 C 227

Honorable Martin C. Ashman

PROPOSED ORDER

THIS CAUSE coming to be heard on Plaintiff's motion to enter an order voluntarily dismissing certain Defendants pursuant to 735 ILCS 5/2-1005 and for leave to file a First Amended Complaint instantner; all parties having notice, and this Honorable Court in the premises, having jurisdiction,

IT IS HEREBY ORDERED that Plaintiff's motion to enter an order voluntarily dismissing certain Defendants pursuant to 735 ILCS 5/2-1005 is granted.

IT IS FURTHER ORDERED that the following Defendants, WAL-MART ASSOCIATES, INC., WAL-MART.COM USA, LLC, WAL-MART REALTY COMPANY, WAL-MART STORES EAST, INC. and WAL-MART TRANSPORTATION, LLC, are voluntarily dismissed as Defendants in this case without prejudice and without costs.

IT IS FURTHER ORDERED that this case shall continue as to remaining Defendants, WAL-MART STORES, INC. and WAL-MART REAL ESTATE BUSINESS TRUST.

IT IS FURTHER ORDERED that Plaintiff is given leave to file a First Amended Complaint instantner.

By: _____

Bridget A. Mitchell
Attorney at Law
One North LaSalle Street, Suite 1325
Chicago, Illinois 60602
312-214-4040
Attorney No. 71063
and

Thomas J. Tyrrell
1020 South Arlington Heights Road
Arlington Heights, Illinois 60005
847-358-9400
Attorney No.24525

EXHIBIT "B"